

01000009003

REED SMITH SHAW & McCLAY

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PITTSBURGH, PA 15230-2009  
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TELEX 277871 (RCA)

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PITTSBURGH, PA 15219-1886  
412-288-3131

WASHINGTON, DC  
PHILADELPHIA, PA  
HARRISBURG, PA  
MCLEAN, VA  
PRINCETON, NJ

WRITER'S DIRECT DIAL NUMBER  
(412) 288-4040

September 30, 1993

VIA HAND DELIVERY

Secretary  
Interstate Commerce Commission  
Washington, D.C.

10810-B  
OCT 6 1993-12:40 PM  
INTERSTATE COMMERCE COMMISSION

Dear Secretary:

I have enclosed an original and one counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Bill of Sale, Assignment and Assumption Agreement, a secondary document. The primary documents to which it is connected are recorded under Recordation Numbers 10810, 10811, 10812 and 10812-A. We request that this document be cross-indexed.

The names and addresses of the parties to the document are as follows:

Seller: Westinghouse Electric Corporation  
One Oxford Centre  
Pittsburgh, Pennsylvania 15219

Purchaser: Mellon Financial Services Corporation #3  
One Mellon Bank Center, Suite 4444  
Pittsburgh, Pennsylvania 15258

A description of the equipment covered by the document follows:

RECEIVED  
OFFICE OF THE  
SECRETARY  
OCT 11 12 13 PM '93  
LICENSING BRANCH

**REED SMITH SHAW & McCLAY**  
Interstate Commerce Commission -2-

September 30, 1993

<u>Description</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>
4,750 cubic ft., 100-ton steel covered hopper cars	100	ATSF 315900-315999
4,650 cubic ft. covered hopper cars	150	ATSF 316000-316149

A short summary of the document to appear in the index follows:

Bill of Sale, Assignment and Assumption Agreement between Westinghouse Electric Corporation, One Oxford Centre, Pittsburgh, Pennsylvania 15219, as seller, and Mellon Financial Services Corporation #3, One Mellon Bank Center, Suite 4444, Pittsburgh, Pennsylvania 15258, as purchaser, dated September 30, 1993 and covering 100 4,750 cubic ft., 100-ton steel covered hopper cars and 150 4,650 cubic ft. covered hopper cars, and connected to Conditional Sale Agreement-1 with Recordation Number 10810, Conditional Sale Agreement-2 with Recordation Number 10811, Lease of Railroad Equipment with Recordation Number 10812 and Assignment of Lease and Agreement with Recordation Number 10812-A.

A fee of \$16.00 is enclosed to cover the filing fee for the above document (please notify the undersigned if additional fees are required). Please return one original to the undersigned at the above address.

Please let me know if you have any questions with respect to the foregoing or if there is any additional information that you require. Your assistance is greatly appreciated.

Very truly yours,

REED SMITH SHAW & McCLAY

By *William R. Burkhart*  
William R. Burkhart

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/6/93

OFFICE OF THE SECRETARY

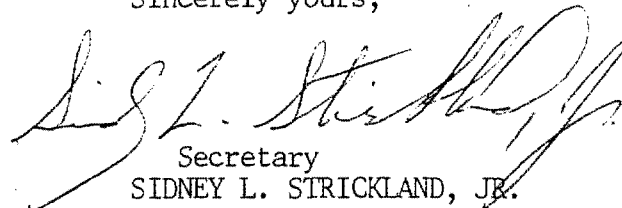
William R. Burghart  
Reed Smith Shaw & McClay  
435 Sixth Avenue  
Pittsburgh, PA. 15219-1886

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on **10/6/93** at **12:20pm**, and assigned  
recordation number(s). **10810-B**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

10870-B  
FILED 100

OCT 6 1993 - 2:22 PM

INTERSTATE COMMERCE COMMISSION

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT, dated and effective as of the later of the dates set forth on the signature page hereto (this "Agreement"), between WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania corporation (together with its successors and assigns, "Seller"), and MELLON FINANCIAL SERVICES CORPORATION #3, a Pennsylvania corporation (together with its successors and assigns, "Purchaser"). The parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Background and Purpose: Definitions. Seller (as successor in interest to Westinghouse Credit Corporation) is a party to, among other things, (i) the Lease Agreement, dated as of July 1, 1979, with The Atchison, Topeka and Santa Fe Railway Company (the "Lessee"; said agreement being the "Lease Agreement"; terms which are defined or the definitions of which are incorporated by reference in the Lease Agreement or any of the documents referred to therein or hereinafter (the Lease Agreement and such documents together being hereinafter called the "Lease Documents") are used herein as so defined), (ii) the Conditional Sale Agreement, dated as of July 1, 1979, with National Steel Car Corporation, Limited, and North American Car Corporation, (iii) the Conditional Sale Agreement, dated as of July 1, 1979, with Pullman Incorporated (Pullman Standard Division) and Railway Marketing Corporation, and (iv) the Participation Agreement, dated as of July 1, 1979, with the Lessee and the parties named in Schedule A thereto, relating to the sale, lease and financing of the property described on Schedule A hereto (the "Property"). Seller desires to enter into this Agreement to evidence its transfer to Purchaser of all of Seller's right, title and interest in, to and under the Property, the Lease Documents and the sale, lease and financing transaction described above (the "Transaction"), and Purchaser desires to enter into this Agreement to evidence its acquisition of the same and to evidence its assumption of all of the obligations of Seller under the Lease Documents as fully as if Purchaser had been an original party thereto in the place and stead of Seller (or Seller's predecessor or predecessors in interest). Whenever any agreement, instrument or other document is referred to herein, by specific reference to the title thereof, by reference to a definition thereof, or otherwise, such reference shall be deemed to include any amendment or supplement thereto or other modification thereof.

SECTION 2. Assignment. Seller hereby assigns, sells, conveys and transfers to Purchaser, and Purchaser hereby acquires, purchases and accepts from Seller, the following assets,

properties, rights and interests of Seller (the "Purchased Assets"):

(i) the entire right, title and interest of Seller in and to the Property;

(ii) the entire right, title and interest of Seller in, to and under each Lease Document;

(iii) the entire right, title and interest of Seller in and to the Transaction; and

(iv) all such other or additional assets, properties, rights and interests as are directly and exclusively related to or associated with any of the foregoing;

TO HAVE AND TO HOLD, all and singular the assets, properties, rights and interests hereby assigned, sold, conveyed and transferred, or intended so to be, unto Purchaser, its successors and assigns, absolutely, to and for its own use forever.

SECTION 3. Assumption of Obligations. In consideration of the transfer of the Purchased Assets from Seller to Purchaser being effected hereby, Purchaser hereby unconditionally assumes and agrees to pay, perform and discharge, or cause to be paid, performed and discharged, all debts, obligations, contracts and liabilities of Seller, whether absolute, contingent, joint, several, joint and several, or otherwise, now existing or hereafter arising, relating or connected to, or associated with or arising out of, in whole or in part, the Transaction or any of the Lease Documents or any portion thereof, as fully as if Purchaser had originally been a party to the Transaction and to each Lease Document in the place and stead of Seller (or Seller's predecessor or predecessors in interest), all without any set-off, counterclaim, deduction, defense, abatement, suspension, deferment, diminution or reduction for any reason whatsoever; provided, however, that Purchaser does not assume and Seller shall remain obligated with respect to any payments due the lessee of the Property under the Lease Documents as a result of any indemnity payments paid by such lessee to Seller, either prior to or after the date hereof. The foregoing covenant shall survive indefinitely.

SECTION 4. Disclaimer of Certain Warranties, etc. Purchaser acknowledges and agrees that, except as otherwise set forth in that certain Purchase Agreement, dated as of September 1, 1993 between Seller and Purchaser (the "Purchase Agreement") or elsewhere in writing, Seller has not made and shall not be deemed to have made any warranty or representation, express or implied,

as to the profitability, value or collectibility of or upon the the Property, the Transaction or any of the Lease Documents or as to the existence of any lien, charge, security interest or other encumbrance upon or with respect to, any Property, and Seller has not made and shall not be deemed to have made any warranty of merchantability or fitness for use of any of the Property, or as to the absence of any defect therein, it being agreed that the sale of Seller's interest in the Property provided for herein (but not its rights under the Lease Documents, as such) is on an "as-is, where-is" basis, THAT SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and that all risks incident to the ownership of the Property, as between Seller, on the one hand, and Purchaser, on the other hand, are to be borne by Purchaser. The provisions of this Section 4 have been negotiated at arm's-length and are intended to be a complete exclusion and negation of any and all warranties or representations by Seller, express or implied, with respect to the Property, whether arising pursuant to the Uniform Commercial Code in effect in the relevant jurisdiction or jurisdictions pertaining to the Transaction or any other statute, rule, regulation or order, now or hereafter in effect, except for such representations and warranties as Seller has made in writing to Purchaser (whether in the Purchase Agreement or elsewhere).

SECTION 5. Further Assurances, etc. At any time and from time to time hereafter, Seller will, upon the request of Purchaser, at Seller's own expense, do, execute, acknowledge, and deliver and cause to be done, executed, acknowledged or delivered, all such further acts, deeds, assignments, bills of sale, transfers, conveyances, certificates, affidavits, opinions of counsel, powers of attorney and other assurances as may be required for the better assigning, transferring, granting, conveying, assuring and confirming to Purchaser, or for aiding and assisting in the collection of or reducing the possession by Purchaser, any of the assets, properties, rights or interests intended to be transferred hereby.

SECTION 6. Power of Attorney. Seller hereby makes, constitutes and appoints Purchaser the true and lawful attorney-in-fact of Seller, with full power of substitution, in the name, place and stead of Seller, but on behalf and for the benefit of Purchaser, to demand and receive any and all of the aforesaid assets, properties, rights and interests of Seller, and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute, prosecute, appear in, defend and appeal in the name of Seller, or otherwise, at the expense and for the benefit of Purchaser, any and all actions, suits and proceedings at law, in equity or otherwise, which Purchaser may deem proper in order to collect or reduce to

possession any of the aforesaid assets, properties, rights and interests of Seller and/or in order to collect or enforce any claim or right of any kind hereby assigned and transferred, or to resist or defend against any claim, debt, obligation, liability or assertion of a liability assumed by Purchaser, or intended so to be, and to do all acts and things in relation to the assets, properties, rights, interests, liabilities and obligations which Purchaser shall deem desirable, Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by any act of Seller, or by its winding up and dissolution, or in any other manner or for any reason whatsoever.

SECTION 7. Representations and Warranties of Seller.  
Seller represents and warrants to Purchaser that:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, with all requisite corporate power and authority to enter into and perform this Agreement.

(b) There is no action, proceeding or investigation pending or threatened against or involving Seller at the date hereof which questions the validity of this Agreement or any action to be taken by Seller pursuant hereto or in connection herewith.

(c) The execution, delivery and performance of this Agreement by Seller will not result in any violation of any term or provision of any Lease Document or any other agreement, indenture or other instrument, or any license, judgment, decree, order law, statute, ordinance or governmental rule or regulation applicable to Seller.

(d) No consent, approval, order or authorization of any governmental or public body or authority on the part of Seller, or consent, approval or authorization of any other person under any term or provision of any Lease Document or any other material agreement, indenture or other instrument, is required for the valid execution, delivery or performance of this Agreement by Seller.

SECTION 8. Representations and Warranties of Purchaser.  
Purchaser represents and warrants to Seller that:

(a) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, with all requisite corporate power and authority to enter into and perform this Agreement.

(b) There is no action, proceeding or investigation pending or threatened against or involving Purchaser which questions the validity of this Agreement or any action to be taken by Purchaser pursuant hereto or in connection herewith.

(c) The execution, delivery and performance of this Agreement by Purchaser will not result in any violation of any term or provision of any agreement, indenture or other instrument, license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to Purchaser.

(d) No consent, approval, order or authorization of any governmental or public body or authority on the part of Purchaser, or consent, approval or authorization of any other person under any term or provision of any material agreement or instrument binding on Purchaser, is required for the valid execution, delivery or performance of this Agreement by Purchaser.

(e) Purchaser is a wholly-owned subsidiary of Mellon Bank, N.A. ("Mellon Bank") and is, accordingly, a member of the same "affiliated group" (as defined in Section 1504 of the Internal Revenue Code of 1954, as amended) as Mellon Bank. Mellon Bank (i) is a bank organized and doing business in the United States and (ii) has a combined capital and surplus of at least \$100,000,000.

SECTION 9. Survival. The representations and warranties contained in this Agreement shall survive the execution and delivery of any document or instrument contemplated by Section 5, shall not be deemed to be merged into or superseded by any such document or instrument, and shall not be affected by any investigation or inquiry made by any party or on its behalf.

SECTION 10. Modification and Waivers. This Agreement may be modified, amended or changed only by an instrument in writing signed by the party or parties against whom the enforcement thereof is sought. No waiver of the performance of any term or provision hereof shall be valid or effective for any purpose unless such waiver shall be in writing and signed by the party or parties against whom the enforcement of the same is sought.

SECTION 11. Notices. All notices, requests, demands and other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered personally or when mailed, by registered or certified mail, postage prepaid, addressed as follows:



If to Seller, to:

Westinghouse Electric Corporation  
One Oxford Centre  
Pittsburgh, Pennsylvania 15219  
Attention: Manager, Leasing Operations

with a copy to:

McCann, Garland, Ridall & Burke  
Suite 4000  
309 Smithfield Street  
Pittsburgh, Pennsylvania 15222  
Attention: Michael J. Woodring, Esq.

If to Purchaser, to:

Mellon Financial Services Corporation #3  
One Mellon Bank Center, Suite 4444  
Pittsburgh, Pennsylvania 15258-0001  
Attention: President

with a copy to:

Reed Smith Shaw & McClay  
435 Sixth Avenue  
Pittsburgh, Pennsylvania 15222  
Attention: William J. Smith, Esq.

SECTION 12. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement of the parties relating to the specific subject matter hereof. Each of the other parties to any of the Lease Documents, and their respective successors and assigns, are intended to be third party beneficiaries of this Agreement.

SECTION 13. Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be part of or control or affect the meaning hereof.

SECTION 14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 15. Governing Law. This Agreement, including all matters of construction, validity and performance, shall in all respects be governed by, and construed in accordance with, the law of the Commonwealth of Pennsylvania applicable to contracts

made in such jurisdiction, without giving effect to principles relating to conflicts of laws.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf, all as of the day and year first written above.

WESTINGHOUSE ELECTRIC CORPORATION

September 27, 1993

By: 

Name: ANTHONY CENZO  
Title: VICE PRESIDENT

MELLON FINANCIAL SERVICES  
CORPORATION #3

September 30, 1993

By: 

Name:

Title:

ARTHUR FOLSOM, JR.  
SENIOR VICE PRESIDENT

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF ALLEGHENY )

SS:

On this 27th day of September, 1993, before me personally appeared Anthony C. Curren to me personally known, who, being by me duly sworn, says that he is a Vice President of Westinghouse Electric Corporation, a Pennsylvania corporation, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL STAMP)

Cheree L. Fitzmaurice  
Notary Public

My Commission Expires:

Notarial Seal  
Cheree L. Fitzmaurice, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires June 17, 1996  
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF ALLEGHENY )

SS:

On this 30th day of SEPTEMBER, 1993, before me personally appeared ARTHUR FOLSON JR. to me personally known, who, being by me duly sworn, says that he is a SR. VICE PRES. of Mellon Financial Services Corporation #3, a Pennsylvania corporation, that the foregoing instrument was signed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL STAMP)

Carol A. Soltes  
Notary Public

My Commission Expires:

March 23, 1996

Notarial Seal  
Carol A. Soltes, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires March 23, 1996  
Member, Pennsylvania Association of Notaries

SCHEDULE A

DESCRIPTION OF PROPERTY

The Atchison, Topeka and Santa Fe Railway Company

File No.: 72189

<u>Description</u>	<u>Quantity</u>	<u>Identification Nos.</u>
4,750 cubic ft., 100-ton steel covered hopper cars	100	ATSF 315900-315999

4,650 cubic ft., covered hopper cars	150	ATSF 316000-316149
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Reported Casualties:

4,750 cubic ft., 100-ton steel covered hopper cars	5	ATSF 315910, 315948, 315954, 315985, and 315994
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4,650 cubic ft., covered hopper cars	4	ATSF 316007, 316012 316014 and 316050
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